

KETCHIKAN CHARTER COMMISSION

REGULAR MEETING

February 20, 2004

The regular meeting of the Ketchikan Charter Commission commenced at 6:00 p.m., Friday, February 20, 2004, in the City Council Chambers.

A: Pledge of Allegiance**Roll Call**

PRESENT: PAINTER, OTTE, THOMPSON, HARRINGTON, KIFFER,
MCCARTY, FINNEY
ABSENT: NONE

B: Ceremonial Matters/Introductions

City of Ketchikan Clerk, Katy Suiter, and Ketchikan Gateway Borough Clerk, Harriett Edwards were introduced.

C: Public Comments

Katy Suiter, Pennock Island, said the addition of the Chief Fiscal Officer as an Assembly-appointed employee was a bad idea and the position should stay under the manager. The manager has three different fiscal responsibilities listed in the Charter as required and if the Fiscal Officer were not under the Manager's supervision, it could be difficult to get the information needed to fulfill these duties.

Harriett Edwards, Forest Park, agreed with Ms. Suiter. Ms. Edwards also pointed out that the duties listed for the Clerk are too restrictive and the second paragraph of those duties listed in the Charter should be removed. Title 29 of the Alaska Code clearly states the duties of a municipal clerk and it is not necessary to reiterate them in a community Charter.

D. Informational Reports and/or Commission Presentations

Chair Thompson listed the tasks he accomplished during the past week. He

indicated emails he had sent to the Clerks, the Finance Officers, and the Managers. He indicated he would forward the answers to the Secretary for compilation and they will be forwarded on to the Commission and be posted on the web page.

Al Hall, Finance Director of the Borough, said he had concerns about having the CFO position under the Assembly because having the position be political may not allow the position to have the independence required by the AICPA or other professional organizations. He said he'd supply financial documents as time allows.

Bob Newell, City Finance Director, indicated his views were personal rather than the City's position on the questions. He said the political nature of the appointment may cloud the Finance Director's judgment and compromise the finances of the municipality. He went on to explain his position. As to the question regarding the "five hundred dollars or less in 1998 dollars" mentioned in Section 2.10(a)(2)(C) prohibited actions by Assemblymembers, he said the amount is subjective; the intent of the section is to remove any appearance of potential conflict of interest and the Commission may want to change the wording to allow for the dollar amount to be set by ordinance. Mr. Newell also sent a spreadsheet describing the City of Ketchikan taxes.

An email was also sent to the Attorneys discussing residency requirements and the clause "whenever practicable". Mr. Schweppe of the City of Ketchikan responded that the Alaska Supreme Court has on two occasions held that the maximum residency requirement is one year. He said that a case of dire emergency could arise making the proper notice of a meeting impossible. That emergency would be the instance where the phrase "whenever practicable" would be warranted. (See Section 2.07 – Meetings)

Borough Attorney, Scott Brandt-Erichsen, also responded and addressed the residency question. He indicated he wanted to research the issue prior to giving an answer.

Dan Bockhorst of the LBC, gave Chair Thompson the name of the person who is putting together the grant agreement, so that is moving forward.

Chair Thompson attended the KGB meeting on the 17th. The appropriation for funding was passed in the 1st reading. The second reading will be March 1. He also attended the City of Ketchikan meeting on the 19th. The in-kind request for office space and equipment was approved. He handed out a draft revised budget based on the amount of \$20,000.

Both City and Borough Managers were contacted about the upcoming discussions. A further request was made to Mr. Hall regarding Borough tax information.

Commissioner Harrington provided information about resolutions, ordinances and limitations of home rule powers. That information will be provided to all the Commission and Sitnews.

Commissioner Otte reported that Mr. Davis from Tongass Business Center has a computer ready for the Commission's use. He is also requesting agenda information be provided to him on Mondays so that the daily ad can be updated. While the agenda isn't finalized until Wednesday, there is a schedule of topics for discussion that could be provided for this purpose. Mention should be made in the ad that the meetings are televised.

KTKN radio was thanked for the pizza and Happy Water for the new "Ketchikan" water provided for the Commission and audience.

E. Consent Calendar

The minutes of the February 13, 2004 regular meeting were approved by unanimous voice vote.

F. Unfinished business

F-1: Acceptance of the Article II and Article III of the Ketchikan 2004 Draft Charter Agreement, Second Reading

M/S by McCarty/Harrington to approve Articles II and III of the Ketchikan 2004 DRAFT Charter in the second reading.

2.02 (d) noted as a highlighted section. A suggestion for change to procedures to determine which elected Assemblymember would get the 3, 2 and 1-year seats included drawing lots from the successful candidates or some other form of random choice be employed rather than using number of votes. After discussion, which indicated it has not been determined whether the positions will be elected at large, by numbered seats or by district, it was decided that the section will remain highlighted for future discussion.

A question arose as to whether current Council/Assemblymembers could be denied eligibility to run for the new Assembly. It was felt the issue was

discussed in the transition plan and that since the current office holders were qualified to hold office, there would be no restriction on their running for the new body.

The highlight will be removed from Section 2.03 – Qualifications on the one year requirement.

Section 2.04 (c) – Filling of Vacancies.

The Clerks discussed the premise of keeping the Charter generic and how they didn't feel it was necessary to fill a vacated seat by special election, since it is stipulated the appointed fill is only until the next regular election.

They noted that in the proposed Charter, the time line of 30 days is not practical, as it is really too short to properly advertise and notice the replacement action.

M/S McCarty/Kiffer to delete the language, "Within thirty days after an assemblymember position becomes vacant".

Commissioner Finney indicated that the whole of the section should be deleted after the first sentence because it isn't firm what the public wants on the replacement issue.

Commissioner Kiffer also felt the decision on how to replace an Assemblymember or the Mayor should be up to the new Assembly and the whole of the section other than the first sentence should be removed. Commissioner Painter agreed. Commissioner McCarty indicated that the first sentence says the procedure to appoint will be set by ordinance. The rest of the section, without the time limitation, merely says who will be appointed, but does not give the procedure and this part of the section should be left intact, except for removal of the time limit. Chair Thompson agreed with Commissioner McCarty.

A roll call vote on the Amendment to Section 2.05(c) to remove the wording, "Within thirty days after an assemblymember position becomes vacant" was taken.

FOR: THOMPSON, HARRINGTON, KIFFER, MCCARTY, OTTE, FINNEY,
PAINTER

AGAINST:

ABSENT:

The amendment passed, but will remain highlighted for future discussion.

The highlight will be removed from Section 2.07 – Meetings on the words “whenever practicable”.

Commissioner Finney commented on Section 2.09 (b) on the Mayor’s veto.

M/S McCarty/Painter to delete the language after sold and insert the language “at an amount to be set by ordinance”.

Commissioner Harrington and Commissioner Kiffer felt that some kind of language should be in place to limit the Assembly so they wouldn’t have to determine what the dollar figure was, but not tie to a specific dollar figure.

FOR: THOMPSON, KIFFER, MCCARTY, OTTE, FINNEY, PAINTER
AGAINST: HARRINGTON
ABSENT:

The amendment passed and the wording will remain highlighted.

A discussion of Section 2.10 (c) was held.

Marvin Hill, 808 Forest Park, spoke and indicated there is a State Statute speaking to the issue of a member of the Assembly who has a financial interest in an item before the body must abstain.

M/S Harrington/Otte to delete the second paragraph in Section 2.12 on the recommendation of the City and Borough Clerks.

FOR: THOMPSON, HARRINGTON, KIFFER, MCCARTY, OTTE, FINNEY,
PAINTER
AGAINST:
ABSENT:

The amendment passed.

M/S McCarty/Kiffer to delete the current Section 2.14 – Chief Fiscal Officer and renumber the following sections accordingly.

FOR: THOMPSON, HARRINGTON, KIFFER, MCCARTY, OTTE, FINNEY,
PAINTER
AGAINST:
ABSENT:

The amendment passed.

Chair Thompson pointed out that in last sentence in 3.03 – Emergency Ordinances should be underlined. Secretary Otte noted this and will correct.

Section 3.04 was explained by the Clerks and the highlighting will be removed.

Section 3.05 was amended by Commissioner Otte & seconded by Commissioner Painter to retain only the language, “The ordinances shall be codified and published in book or pamphlet and kept up to date.” After discussion the amendment was withdrawn, but the highlights will be retained in this section.

A vote on the main motion was taken to approve Articles II and III as amended of the Ketchikan 2004 DRAFT Charter in the second reading.

FOR: THOMPSON, HARRINGTON, KIFFER, MCCARTY, OTTE, FINNEY,
PAINTER

AGAINST:

ABSENT:

With approval of the body, Item G-1 was brought forward for discussion at this time.

G-1: Review and Acceptance of articles IV, V, VI, & VII of the City of Ketchikan’s Charter of 2001, First Reading, and the Introduction of Articles VIII and IX

After the Chair read the agenda item, it was decided to take the Articles out of order so that the City and Borough Clerks could speak on Article V and VI.

M/S Harrington/Painter to approve Article V at the first reading.

Clerks Suiter and Edwards made the following suggestions:

5.01 (b) -- cut the words “and submit questions to the voters” because this is already covered in section (c)

5.01 (c) – delete the last sentence, “Questions may also be submitted at elections as provided for in other sections of this Charter” since there

are no other types of elections other than regular and special.

5.01 (d) – completely eliminate because it is hard to understand and replace it with the Sitka alternative, 5.01 (c) Notice of Elections, but eliminating the last sentence of that section. The wording would be, “At least 30 days published notice shall be given of a regular or special election.”

5.01 (e) (f) are okay.

Add 5.01 (g) which is Juneau’s Section 6.4 Nominations with a change in the number of qualified voters required should be 20. The new Section 5.01 (g) would read, “Candidates for elective office shall be nominated by a petition signed by at least 20 qualified voters of the municipality. No nominating petition may be accepted unless accompanied by a signed acceptance of the nomination.”

M/S McCarty/Harrington to amend Article V as listed above.

FOR: THOMPSON, HARRINGTON, KIFFER, MCCARTY, OTTE, FINNEY,
PAINTER

AGAINST:

ABSENT:

Article V, as amended passed on to second reading on 2/27/04.

M/S Painter/Harrington to approve Article VI of the City of Ketchikan’s Charter of 2001 at the first reading.

Clerks Suiter and Edwards made the following suggestions:

Section 6.01 – Initiative and Referendum shall read as listed in the Sitka alternative Section 6.01 “The powers and rights of the initiative and referendum are served to the people of the municipality as prescribed by law. The Assembly, by ordinance, shall regulate the procedure for their exercise.”

Sections 6.02, 6.03, 6.04, 6.05 – Delete

Section 6.06 should be renumbered to 6.02 and highlighted.

The Clerks explained that the Assembly can set forth through ordinance how
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initiatives and referendums are handled. It is set out in the Alaska Statutes and those statutes can be modified or changed by the Assembly, if needed. The Charter should be a shell document. The legislature is considering a change to the initiative and referendum process as set forth in State law. If these detail sections are left in the Charter, it makes it much harder to change than if those rules are set by ordinance.

Clerk Suiter also pointed out that at present, if someone comes to her with an initiative, the language must be provided by the person filing, whereas the Borough has the leeway to make the language legal for the person.

Chair Thompson noted that at the 2/19/04 City Council meeting a remark was made that there had been no budget in the Charter Commission petition that went to the voters. He said that they were going to put a budget in the petition initiative, but were advised that if they did, it would not pass muster under law because the Council and Assembly or anyone else could not be bound to fund the Commission, if approved. It was noted that Clerk Suiter could not have advised those petitioners of that fact, but Chair Thompson indicated they were advised. It was pointed out that the City has a Charter, but the Borough was formed under the laws of the State, so the process can be seen from both perspectives and how limiting Charter language can be to an issue.

Reasons for recall were discussed and it was noted that in State law there are three reasons noted: misconduct in office, incompetence, or failure to perform prescribed duties. Commissioner Harrington wanted to know if further reasons could be added locally, and it was pointed out that current Section 6.06 – Recall states that “The Assembly, by ordinance, may further regulate the recall insofar as such regulation is not in conflict with the State constitution or law.” Title 29.26.250-29.26.360 has reference as to what items a Home Rule Municipality cannot overrule State law. Commissioner Harrington provided a copy of this section of for the Secretary to disseminate to the Commissioners.

M/S McCarty/Painter to amend Article VI as recommended by the Clerks as stated above. (This was accomplished in two sections: One deleting 6.02, 6.03, 6.04 and 6.05 and renumbering 6.06; and two, amending 6.01 to read, “The powers and rights of the initiative and referendum are served to the people of the municipality as prescribed by law. The Assembly, by ordinance, shall regulate the procedure for their exercise.”

FOR: THOMPSON, HARRINGTON, KIFFER, MCCARTY, OTTE, FINNEY,
PAINTER

AGAINST:

ABSENT:

Article VI, as amended, passed on to second reading on 2/27/04.

Clerks Suiter and Edwards were thanked by the Commission and a short break was called for.

The Commission resumed review of the remaining Articles in agenda item G-1 at 8:10 pm.

M/S McCarty/Painter to approve Article IV of the Ketchikan 2004 DRAFT Charter in the first reading.

M/S Otte/Painter to add the sentence, "The action of the Assembly shall not be subject to review by any court or agency" to the end of Section 4.01.

Commissioner McCarty pointed out that this probably wasn't constitutionally sound. The Manager usually has a contract and the contract will state those terms agreed between the Assembly and the Manager.

A roll call vote was taken on the amendment to add the sentence listed above to Section 4.01.

FOR:

AGAINST: THOMPSON, PAINTER, HARRINGTON KIFFER, FINNEY,
MCCARTY, OTTE

ABSENT:

The amendment failed.

M/S Painter/Kiffer to add the following to the end of the first sentence in Section 4.01, "and set his/her compensation".

It was pointed out that the Assembly sets salaries in the budget and also contractually with the Manager, so the amendment is a redundant.

A roll call vote was held to add "and set his/her compensation" to the end of the first sentence in Section 4.01.

FOR: KIFFER, FINNEY, PAINTER

AGAINST: THOMPSON, HARRINGTON, MCCARTY, OTTE

ABSENT:

The amendment failed.

M/S Finney/Kiffer to change the wording in the last sentence of Section 4.01 to read, "The Assembly may suspend or remove the manager at any time by a vote of a [super] majority of the assemblymembers." (Note: Super to defined at such time as the number of assemblymembers is determined).

FOR: KIFFER, PAINTER

AGAINST: THOMPSON, HARRINGTON, MCCARTY, OTTE, FINNEY

ABSENT:

The amendment failed, but the area of the section will be highlighted.

It was also noted that some members of the public had made comments that perhaps an advisory vote of the people every few years should be taken to affirm the community's support of the Manager.

M/S Thompson/Harrington to amend Section 4.02 (a) to read, " Appoint, lay off, suspend, demote, or remove all directors or heads of administrative departments and all other officers and employees of the municipality, (except personnel in the department of law, the clerk's office, school district, and employees appointed by the Assembly or their subordinates). Strike "provided". Capital T in "The manager may delegate this power and duty to directors or heads of departments and other administrative officers;"

A roll call vote was taken on the above-listed amendment.

FOR: THOMPSON, HARRINGTON, KIFFER, MCCARTY, OTTE, FINNEY,
PAINTER

AGAINST:

ABSENT:

The amendment passed.

It was requested that in Section 4.02 (c) the words "excluding the municipal utilities" should be highlighted until the Commission has dealt with those entities.

A roll call vote to approve Article IV as amended in the first reading was taken.

FOR: THOMPSON, HARRINGTON, KIFFER, MCCARTY, OTTE, FINNEY,
PAINTER

AGAINST:

ABSENT:

Article IV as amended passed.

M/S Harrington/Painter to approve Article VII of the Ketchikan 2004 DRAFT Charter in the first reading.

Ruth Hill, 808 Forest Park, said she wants to see all the Planning ordinances carried forward to have sunset clauses so they all have to be revisited by the new Assembly. She said she was especially talking to conditional use permit fees that have to be regularly repaid. Chair Thompson pointed out he thought that was addressed in the original transition plan and it will be taken up by the Commission. The way the transition plan is written is that all ordinances will stay in place, but will have to be re-adopted by the new Assembly.

A roll call vote to approve Article VII of the Ketchikan 2004 DRAFT Charter in the first reading was taken.

FOR: THOMPSON, HARRINGTON, KIFFER, MCCARTY, OTTE, FINNEY,
PAINTER

AGAINST:

ABSENT:

Article VII moves on to second reading on 2/27/04.

At this time the Commission returned to the original agenda order.

F-2: Suggested questions for a Commission mail-out survey (Continued from 2/6/04)

M/S Painter/Finney to postpone this item another two weeks until 3/5/04. There was some discussion and a roll call vote was taken.

FOR: HARRINGTON, KIFFER, MCCARTY, OTTE, FINNEY, PAINTER

AGAINST: THOMPSON

ABSENT:

The item will be postponed until 3/5/04.

It was M/S McCarty/Finney to reconsider the postponement of the item so that discussion could be held.

FOR: THOMPSON, KIFFER, MCCARTY, OTTE, FINNEY, PAINTER
AGAINST: HARRINGTON
ABSENT:

The item will be discussed at the present meeting.

Commissioner Finney felt the survey shouldn't be sent out until there are specific questions formulated. He doesn't want service areas addressed until that item has gone through the review process by the Commissioners.

Various Commissioners commented that they weren't pleased by some of the questions, the format was never decided, and the funding still isn't here to do this. It was also suggested that a comment section be added so that the public can write in their hot issues, in addition to filling out the responses. Other Commissioners spoke as to the effectiveness of data in yes/no, multiple choice questions, or rating the subject on a number scale as opposed to strictly written comment format are all effective survey procedures. It was also suggested that a DRAFT of the questions be made available on Sitnews, but on further discussion, it was decided not to put the draft out. Another suggestion would be to do specific surveys, i.e. one just on service areas or one just on the utilities.

M/S Painter/Kiffer to submit questions to the public in substantially the same format as those attached. These questions are to be included in a community-wide mail-out or other distribution as soon as funding allows.

Another comment that the areas that are being highlighted as the Commission moves through the Charter would be good sources of questions.

Question 6 should be left on the survey. Perhaps it could be reworded to just ask "Do you want to have the assemblymembers sit at-large or be elected by specific district?" Another question would be "How many assemblymember should there be?" Seven or a fill-in blank.

Care needs to be taken in how the questions are worded. This should be a work in progress. Commissioner Finney felt that the survey shouldn't go out until the Commission is further on in the process and the questions will become apparent.

It is suggested that each Commissioner pick the questions they don't like or have changes to and email that information to the Secretary so that the document can be revised. Each Commissioner needs to format their own questions and a consensus can possible be.

Chair Thompson suggested that everyone go through the questions, reword them to how each wants or delete or add some, send them to the Secretary and all will be compiled in a document for discussion next meeting. This could be an ongoing agenda item. He said he wouldn't make this a motion, but just as a procedural item.

M/S McCarty/Painter to continue this item for discussion at the next meeting.

A unanimous voice vote was taken. The survey and survey questions will be on the 2/27/04 agenda as a discussion item.

Paul Hook, 488 North Point Higgins, pointed out that there should be 10 questions maximum in the survey on one page and to K.I.S.S. (keep it simple, stupid)

F-3: Motion to begin a search for a staff secretary depending on available funding (Postponed from 2/6/04)

M/S Harrington/Painter To approach the Borough and the borough Clerk and request assistance in advertising, hiring, and providing a pay mechanism for a 20-hour per week staff person to assist the Commission with their elected responsibilities.

It was agreed that the process should begin, even though technically there isn't funding in place. The Commission has pledges of financial support. The process will take a few weeks and it should be started now.

The pay will be funneled through the Borough, and the Borough has pledged funding as well as the LBC grant. There is a question as to whether this person will be on payroll (with taxes taken out like a regular temporary employee) or under a professional services contract. It can be advertised with the caveat of pending funding.

The position can be posted on the City and Borough's websites, on Sitnews and with Job Services. At this time, newspaper advertising isn't available since the funding isn't there yet but perhaps the Borough Manager could authorize running a newspaper ad one time paid for by the Borough.

A roll call vote was taken on the original motion to approach the Borough and the Borough Clerk and request assistance in advertising, hiring, and providing a pay mechanism for a 20-hour per week staff person to assist the Commission with their elected responsibilities.

FOR: THOMPSON, KIFFER, MCCARTY, OTTE, HARRINGTON, PAINTER
AGAINST: FINNEY
ABSENT:

Commissioner Otte will format a job description and position announcement and get them electronically posted where available, as well as physically posted where possible.

G-2: Appointment of a subcommittee to perform a comprehensive evaluation of the costs associated with current Areawide powers

M/S McCarty/Finney to open the floor for volunteers for a subcommittee of this Charter Commission whose duties will consist of performing a comprehensive

evaluation of the costs associated with current Areawide powers exercised by the City of Ketchikan and the Ketchikan Gateway Borough.

Commissioner McCarty said he was willing to go to the radio station and the Assembly and City Council meetings in lieu of being on this financial subcommittee.

Chair Thompson indicated that this was put on the agenda because it is information that is absolutely going to be needed. Perhaps a subcommittee is not needed and he can just contact the municipal bodies for the information that we need. He said that subcommittees get into issues with the Open Meetings Act and more meetings. At the minimum, present and prior year budgetary information and the most current financial statements from each body are needed. Chair Thompson indicated that while PDF is nice to view, it would be preferable to get these documents in Excel for editing purposes.

He said that probably the largest task this Commission is going to have is to prepare the three-year projected budget as part of the petition.

Commissioner Harrington mentioned that Lance Mertz is doing a projected budget for his degree course and he has said he will turn it over to the Commission around the end of April. He said he'd call Mr. Mertz and see if he has the information on his computer and would be willing to assist the Chair and the Commission in this matter.

Chair Thompson indicated he would be willing to forego the idea of a subcommittee, but he has to know from the Commission what is the consensus on what number is in mind. Commissioner Harrington stated the number he has in mind is not significantly (if at all) higher than present circumstances. Chair Thompson then asked what number would be for costs, that the other was revenues. A suggested way to go about it would be to determine how much each power's budget will cost from where it is now. The baseline information as to the current financial information must be on hand before any projections can be made concerning the City, the Borough, the School District and KPU.

M/S McCarty/Painter to continue this for further discussion at the next meeting. Hearing no objections, the Chair so moved.

H: Commission Comments

Commissioner Harrington mentioned the KRBD radio program next Friday morning, 2/27/04 at 8:30. Commissioner McCarty said he would do it but if

something came up he would make arrangements with another Commissioner to attend.

Commissioner Painter commented on his feelings regarding the City Counsel meeting of 2/19/04 and the City Manager's remarks in the newspaper.

No Commissioner absences are planned for next week.

Ruth Hill offered a case of colored paper should the Commission need it for any surveys. She said just to give her a call when it's needed.

The meeting was adjourned at 9:27 p.m.